

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
GORES INC. DBA GORE BROTHERS
DAIRY #2 AND #3
AGRICULTURAL WASTE PERMIT -
NONE

§
§
§
§
§
§
§

BEFORE THE

TEXAS NATURAL RESOURCE

CONSERVATION COMMISSION

AGREED ORDER DOCKET NO. 2000-1247-MWD-E

I. JURISDICTION AND STIPULATIONS

At its OCT 10 2001 agenda, the Texas Natural Resource Conservation Commission ("the Commission" or "TNRCC") considered this agreement of the parties, resolving an enforcement action regarding Gores Inc. dba Gore Brothers Dairy #2 and #3 ("Gores Inc.") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TNRCC, through the Enforcement Division, and Gore Inc. appear before the Commission and together stipulate that:

1. Gores Inc. owns and operates a dairy located adjacent to County Road 210 at a point approximately 3 miles southeast of the intersection of State Highway 36 and US Highway 67 and 3 miles southeast of Comanche, Comanche County, Texas (the "Facility").
2. Gores Inc. has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and Gores Inc. agree that the Commission has jurisdiction to enter this Agreed Order, and that Gores Inc. is subject to the Commission's jurisdiction.
4. Gores Inc. received notice of the violations alleged in Section II ("Allegation") on or about August 30, 2000.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Gores Inc. of any violation alleged in Section II ("Allegation"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Dollars (\$6,000) is assessed by the Commission in settlement of the violation alleged in Section II ("Allegation"). Gores Inc. has paid Four Thousand Eight Hundred Dollars (\$4,800) of the administrative penalty and One Thousand Two Hundred Dollars (\$1,200) is deferred contingent upon Gores Inc.'s timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full

compliance with the terms of this Agreed Order. If Gores Inc. fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Gores Inc. to pay all or part of the deferred penalty.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TNRCC and Gores Inc. have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Gores Inc. has submitted a major permit amendment application to include Dairies #2 and #3 in the existing permit for Dairy #1. The amendment application was determined administratively complete on January 5, 2001.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Gores Inc. has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order is not intended to become a part of Gores Inc.'s compliance history.
12. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
13. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATION

As owner and operator of the Facility, Gores Inc. is alleged to have failed to obtain a Texas Pollutant Discharge Elimination System ("TPDES") permit and continued to operate, in violation of 30 TEX. ADMIN. CODE § 321.33 and TEX. WATER CODE § 26.121 as documented during an investigation conducted on May 9, 2000.

III. DENIALS

Gores Inc. generally denies each allegation in Section II ("Allegation").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TNRCC that Gores Inc. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Gores Inc.'s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegation in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TNRCC" and shall be sent with the notation "Re: Gores Inc. dba Gore Brothers Dairy #2 & #3, Docket No. 2000-1247-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Natural Resource Conservation Commission
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Gores Inc. shall undertake the following technical requirements:

- a. Respond completely and adequately, as determined by the Water Permits and Resource Management Division, to all letters requesting information concerning Gores Inc.'s TPDES permit amendment application within 30 days after the date of such letters, or by any other deadline specified by the Water Permits and Resource Management Division;
- b. Within 300 days after the effective date of this Agreed Order, submit written certification that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained; and
- c. Submit all correspondence, reports, and documentation required by these Ordering Provisions to:

Ms. Jayme Brown, Enforcement Coordinator
Enforcement Division, MC 149
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

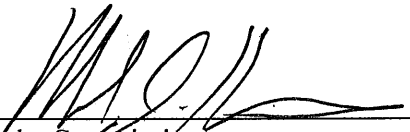
Mr. Sid Slocum, Manager
Water Section
Arlington Regional Office
Texas Natural Resource Conservation Commission
222 East College
Stephenville, Texas 76401

3. The provisions of this Agreed Order shall apply to and be binding upon Gores Inc.

4. If Gores Inc. fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Gores Inc.'s failure to comply is not a violation of this Agreed Order. Gores Inc. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Gores Inc. shall notify the Executive Director within seven days after Gores Inc. becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Gores Inc. shall be made in writing to the Executive Director. Extensions are not effective until Gores Inc. receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Gores Inc. in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

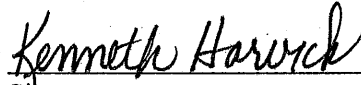
SIGNATURE PAGE

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

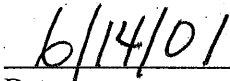


For the Commission

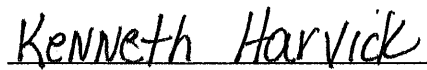
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein.




Signature



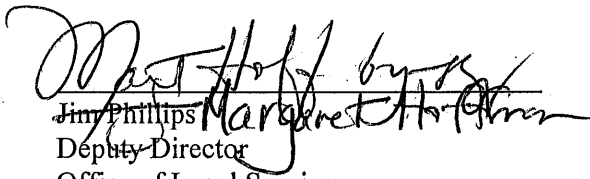
Date



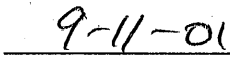
Name (Printed or typed)
Authorized Representative of
Gores Inc. dba Gore Brothers
Dairy #2 & #3



Title



Margaret Hoffman
Deputy Director
Office of Legal Services
Texas Natural Resource Conservation Commission



Date

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

October 17, 2001

CERTIFIED MAIL

Kenneth Harvick, President
Gores Incorporated
dba Gore Brothers Dairy #2 & #3
P.O. Box 1000
Comanche, Texas 76442-1000

RE: Gores Inc. dba Gore Brothers Dairy #2 and #3
TNRCC Docket No. 2000-1247-MWD-E
Permit No. NONE; Enforcement ID No. 10455/2
Agreed Order assessing administrative penalties and requiring certain actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Irma Salazar of the Texas Natural Resource Conservation Commission's Office of the Chief Clerk (MC 105) at (512) 239-1328.

Sincerely,

A handwritten signature in cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/is

Enclosure

cc: Gerry Kendall, Field Investigator, TNRCC Region 4
Michelle Harris, Enforcement Coordinator, TNRCC Enforcement Division (MC 149)